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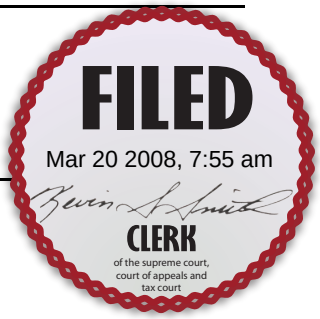
IN THE
COURT OF APPEALS OF INDIANA



EVA A. CONRAD,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 79A02-0706-JV-489
	)	
TIPPECANOE COUNTY DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE TIPPECANOE SUPERIOR COURT
The Honorable Loretta H. Rush, Judge
Cause Nos. 79D03-0703-JT-79 and 79D03-0703-JT-80

March 20, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Eva Conrad ("Mother") appeals from the trial court's termination of her parental rights with respect to her sons, C.C. and A.M. (collectively "the children"). She raises a single issue for our review, namely, whether the Tippecanoe County Department of Child Services ("DCS") presented sufficient evidence to sustain the termination of her parental rights.

We affirm.

FACTS AND PROCEDURAL HISTORY

Mother was married to Brian Conrad ("Brian"), and they had a child, C.C., born November 9, 2001. In 2002, Brian and Mother were caring for Mother's minor nephew, who sustained "extensive bruising to his head and face while in their care." Appellant's App. at 201. As a result, C.C. was briefly removed from their care and placed in relative care. Brian and Mother successfully completed an Informal Adjustment with DCS in January 2003. Also in 2003, "lack of supervision and environment life/health endangerment was substantiated on [Mother and Brian] in regard to 2 unrelated children[.]" Id. "In addition, bruises/cuts/welts, bone fracture and inappropriate discipline were also substantiated on [Mother and Brian] in regard to [an unrelated child]." Id.

On December 21, 2004, Mother was arrested on theft and robbery charges, and she was incarcerated pending trial. Mother had left C.C. in the care of a convicted child molester. At that time, Mother was pregnant, and Brian was also incarcerated. As a result, DCS filed a petition alleging that C.C. was a child in need of services ("CHINS").

The petition alleged that C.C.'s physical or mental condition was seriously impaired or seriously endangered as a result of the inability, refusal, or neglect of C.C.'s parents to provide him with necessary food, clothing, shelter, medical care, education, or supervision.

In February 2005, the trial court adjudicated C.C. a CHINS, and DCS placed him in foster care. On February 8, the trial court entered a parental participation decree, ordering Mother to participate in individual counseling with Vicky Brose at Wabash Valley Outpatient; visit with C.C. on a regular basis; participate with home-based services through Families United; submit to random drug screens upon request of DCS, court, or court-appointed special advocate ("CASA"), completing the screens within twenty-four hours of each request; complete parenting classes through Wabash Valley [sic]; complete a psychiatric evaluation through Alpine Clinic and take all medications as prescribed; remain drug-free; maintain monthly contact with DCS; attend AA/NA (Alcoholics Anonymous/Narcotics Anonymous) meetings twice a week and obtain a sponsor; participate in visitation with C.C. in the home, supervised by Families United; and attend doctor's appointments as scheduled.

On May 3, 2005, Mother gave birth to A.M., the son of Arturo Murrieta ("Arturo"). Tests performed on Mother, Arturo, and A.M. at that time were positive for cocaine. As a result, the trial court authorized DCS to take temporary custody of A.M., and on June 2, 2005, DCS filed a petition alleging A.M. to be a CHINS.

After a factfinding hearing on August 1, 2005, the trial court proceeded to disposition and adjudicated A.M. to be a CHINS. On the same date, the court entered a

parental participation decree, ordering Mother to participate in individual counseling with Steve Peterson at Alpine Clinic; visit with A.M. on a regular basis; participate with home-based services through HGCF (Home-Based Goal-Focused Services for Children and Families); complete a drug or alcohol rehabilitation program and follow all after-care recommendations; submit to random drug screens upon the request of DCS, the court, or the CASA; complete a parenting assessment through HGCF and follow all recommendations; remain drug-free; attend AA meetings on a regular basis; maintain monthly contact with DCS; take any and all prescribed medications on a regular basis; and pay reimbursement in the sum of $50 per week.

On May 23, 2006, DCS filed petitions to terminate Mother's and Brian's parental rights with respect to C.C. and Mother's and Arturo's parental rights with respect to A.M. Following a hearing that took place in September and October 2006, the trial court denied the petitions to terminate. On February 7, 2007, DCS again filed petitions to terminate the parental rights of Mother, Brian, and Arturo. Following a hearing on those petitions on May 1, 2007, the trial court entered its order terminating Mother's and Brian's parental rights with respect to C.C. and Mother's and Arturo's parental rights with respect to A.M.[1] Mother now appeals.[2]

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[1] Brian and Arturo are not parties to this appeal. This court has affirmed the termination of Brian's parental rights. Conrad v. Tippecanoe Dep't of Child Servs., No. 79A04-0708-JV-440 (Ind. Ct. App. January 16, 2008). Arturo did not appeal the termination of his parental rights as to A.M. In her June 24, 2006, report, the CASA stated that Arturo "had not been seen for some time" and "was arrested and able to come up with $10,000 cash bond, which led to suspicion that he may have been dealing drugs. He has reportedly fled the country to Mexico." Appellant's App. at 298. Arturo did not appear at the second termination hearing, in person or by counsel, and he has not appealed.

DISCUSSION AND DECISION

Mother contends that the evidence is insufficient to support the involuntary termination of her parental rights. Initially, we note that the purpose of terminating parental rights is not to punish parents, but to protect the children. Weldishofer v. Dearborn County Div. of Family & Children (In re J.W.), 779 N.E.2d 954, 959 (Ind. Ct. App. 2002), trans. denied. "Although parental rights are of a constitutional dimension, the law allows for the termination of those rights when parents are unable or unwilling to meet their responsibilities as parents. This includes situations not only where the child is in immediate danger of losing his life, but also where the child's emotional and physical development are threatened." Id.

In reviewing a decision to terminate a parent-child relationship, this court will not set aside the judgment unless it is clearly erroneous. Everhart v. Scott County Office of Family & Children, 779 N.E.2d 1225, 1232 (Ind. Ct. App. 2002), trans. denied. Findings of fact are clearly erroneous when the record lacks any evidence or reasonable inferences to support them. Id. When reviewing the sufficiency of the evidence, this court neither reweighs the evidence nor judges the credibility of the witnesses. Id.

To support a petition to terminate parental rights, DCS must show, among other things, that there is a reasonable probability that:

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[2] Mother has included a nearly complete copy of the transcript in her five-volume appendix. This practice not only violates Indiana Appellate Rule 50(A)(g), which instructs appellants to include "brief portions of the Transcript . . . that are important to a consideration of the issues raised on appeal," but results in unreasonably high copying expenses and an unwieldy file. We urge Mother's counsel to abide by this important rule in the future. We also observe that the table of contents for the appendix is inaccurate, making our review and use of the appendix very difficult.

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child.

Ind. Code § 31-35-2-4(b)(2)(B). DCS must also show that termination is in the best interest of the child and that there exists a satisfactory plan for the care and treatment of the child. Ind. Code § 31-35-2-4(b)(2)(C), (D). These factors must be established by clear and convincing evidence. Ind. Code § 31-34-12-2.

Initially, with regard to subsection (B) of the statute, we note that DCS need only present clear and convincing evidence that either the conditions resulting in removal will not be remedied or that the continuation of the parent-child relationship poses a threat to the child's well-being.[3] Because we hold that the evidence is sufficient to support the trial court's conclusion that conditions resulting in the children's removal will not be remedied, we need not address the issue of whether the continuation of the parent-child relationships poses a threat to the children's well-being.

Remedy of Conditions Leading to Removal

In interpreting Indiana Code Section 31-35-2-4, this court has held that the trial court should judge a parent's fitness to care for his or her child as of the time of the termination hearing, taking into consideration evidence of changed conditions. J.K.C. v.

[3] Counsel for DCS filed the identical Appellee's Brief in this case and in Brian's appeal from the termination of his parental rights regarding C.C. The Brief included only one short paragraph and no citations to the record in support of the order terminating Mother's parental rights. Instead, the Appellee's Brief concentrated mainly on the order as to Brian, which is not relevant here. We strongly urge DCS's counsel to tailor its briefs in order to adequately "address the contentions raised in the appellant's argument." See App. R. 46(B)(2).

Fountain County Dep't of Pub. Welfare, 470 N.E.2d 88, 92 (Ind. Ct. App. 1984). However, recognizing the permanent effect of termination, the trial court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. Id. To be sure, the trial court need not wait until the child is irreversibly influenced by a deficient lifestyle such that the child's physical, mental and social growth is permanently impaired before terminating the parent-child relationship. Id. at 93. When the evidence shows that the child's emotional and physical development is threatened, termination of the parent-child relationship is appropriate. Egly v. Blackford County Dep't of Pub. Welfare, 592 N.E.2d 1232, 1234 (Ind. 1992).

C.C. was initially removed from Mother in December 2004 because Mother had been arrested and incarcerated for robbery, and she had left C.C. in the care of a convicted child molester. A.M. was removed from Mother's care upon his birth in May 2005 because Mother and A.M. had both tested positive for cocaine. The children were reunified with Mother in September 2005, but they were removed again in February 2006 because Mother had ignored an order prohibiting the children from having contact with Brian or Arturo. The children were subsequently returned to Mother for a trial period in March 2006 but were removed for the last time in April 2006, because Mother had been associating with certain people in violation of her house arrest rules.

Mother first contends that DCS failed to prove that the detrimental conditions resulting in the children's removal would not be remedied. In support she observes that she "tested negative on all drug screens until February or March 2007[.]" Appellant's

Brief at 17. But Mother also concedes that she did not remain drug-free. In February or March 2007, Mother took Xanax that was not prescribed for her. Also in early 2007, Mother was prescribed Vicodin for a dental problem, and HGCF personnel asked her to give the Vicodin to them to assure that Mother took it as prescribed. Appearing to comply, Mother turned pills over to HGCF personnel, but she had substituted and antibiotic for the Vicodin. Mother then ingested the Vicodin. And, as noted above, Mother has repeatedly associated with certain people, and has allowed the children to have contact with those people, in violation of the rules imposed upon her in this case or in her criminal proceedings. As noted by the CASA, Mother "continues to bring potentially dangerous men into her life[.]" Appellant's App. at 908.

Despite the rehabilitation and other services provided to Mother, as well as counseling she has obtained on her own, Mother has not remained drug-free and has even employed deception to keep the Vicodin that was prescribed for her. She has also associated with and exposed her children to people whom the court has determined to be harmful. Thus, we conclude that there is clear and convincing evidence to show that the conditions of the children's removal will not be remedied.

Children's Best Interests

Mother also contends that DCS failed to prove that termination of her parental rights was in the children's best interests. The evidence most favorable to the judgment shows that, at the time of the second termination hearing, the children had been living with the foster family for fifteen of the preceding twenty-two months. DCS case

manager, Rhonda Friend, testified that termination of Mother's parental rights was in the children's best interests. Friend testified that the children should not

> have to wait another day. They have waited for two years now and it's stressful for [them]. A.M. especially because he's been with these foster parents since birth, to him that's his psychological parents, and its going to be really hard for him when he has to move on, but any more time he spends it just prolongs that for him.

Transcript at 548.

Likewise, the CASA, in her March 17, 2007, report, concluded that the children should not have to wait any longer than the two years they have already waited and that termination is in the children's best interests:

> Eva Conrad has been unsuccessful in internalizing the services that have been offered to her for nearly 2 years. Each time the treatment team has supported Eva and moved towards reunification with her children, the proverbial bomb has dropped, and the team has learned of Eva's manipulation and the children have had to be removed once again or remain in their foster home. The bouncing around these children have experienced is unfair to these children and is most likely unhealthy. They deserve to be in a loving and stable home where their needs can be regularly met. Eva still does not have plans in place to make the great changes she continues to promise that she can make in order to get [C.C. and A.M.] back in her care. She just "knows she can do it." It is not fair for these children to wait any longer. They deserve a safe and permanent home and the stability such home provides and the ability to live their lives as all children should. Based on these reasons and the reasons documented throughout this report and prior reports, the CASA recommends termination of the parental rights of Brian Conrad [and] Eva Conrad for [C.C.] and Arturo Murrieta [and] Eva Conrad [for A.M.] The CASA recommends that adoption be the permanent plan for [C.C. and A.M.] and that they remain in their current foster home until a permanent adoptive home is found.

Appellant's App. at 909.

Mother counters that testimony from C.C.'s therapist shows that she does not pose a significant threat to C.C. But the testimony Mother cites was given at the hearing on

the first petitions to terminate parental rights. The order terminating Mother's parental rights was based at least in part on her conduct since that hearing in addition to her conduct before it. Moreover, in challenging the trial court's finding that termination is in the children's best interest, Mother is merely asking that we reweigh the evidence, which we will not do. The evidence is sufficient to support the trial court's conclusions that termination is in the best interests of the children and that there exists a satisfactory plan for the care and treatment of the children. Thus, we conclude that DCS presented sufficient evidence to support the trial court's termination of Mother's parental rights.

Affirmed.

BAILEY, J., and CRONE, J., concur.